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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.43 OF 2007

Bapu Shantaram Jangale Appellant
versus
M/s.Popular Car Bazaar & ors. Respondents

Mr.R.A.Thorat and Mr.P.J.Thorat for appellant.

Mr.Avinashkumar Dubey with Diwakar Diwedi for respondent no.5.

Mr.V.Z.Kankaria for respondents 1 to 3.

CORAM : A.S.OKA, J.

DATE : 28th March 2007

PC :

1. Heard learned counsel for petitioner, the respondent nos.1 to 3 and respondent no.5. The Respondent nos.4, 6 and 8 are served. Learned advocate for the appellant states that the seventh respondent is a formal party and the appellant is not seeking any relief against seventh respondent.

2. The prayer in the suit filed by the appellant is for grant of an injunction restraining the respondents-defendants from taking forcible

possession of a TATA Sumo Vehicle. Prayer (a) in the Notice of Motion taken out by the appellant is for restraining the original respondents from forcibly taking possession of the said TATA Sumo vehicle. Prayer (b) is for directing the Kurla Police Station to give protection to the appellant for the implementation of the order which may be passed in terms of prayer clause (a) of the Notice of Motion.

3. By the impugned order, the learned Judge declined to grant ad-interim relief. The learned Judge also called upon the appellant to show cause as to why suit should not be ordered to be valued as required by Section 6(iii) of the Bombay Court Fees Act, 1959.

4. After having heard the counsel appearing for the parties I find that a case is made out for grant of a limited ad-interim relief in favour of the appellant as against first to third respondents and fifth, sixth and eighth respondents. There is a prima facie material on record to show that under the orders of the learned Additional Chief Metropolitan Magistrate, 11th Court, Kurla, the appellant was given the custody of the vehicle subject to execution of a

bond. According to the case of the fifth respondent, the appellant has taken a finance for acquiring the said vehicle from the said respondent and the appellant has committed default in repayment of the said amount.

5. As of today, there is a prima facie material on record to show that the appellant is in possession of the vehicle. If first to third respondents and/or fifth, sixth and eighth respondents want to proceed against the appellant for possessing the vehicle, they are free to adopt such proceedings as may be permissible in law. However, they cannot take forcible possession.

6. Therefore, that part of the impugned order dated 13th December 2006 by which prayer for ad-interim relief was rejected, will have to be modified.

7. Hence, the appeal is disposed of by passing following order :-

(a) Till disposal of Notice of Motion No.4653 of 2006, original defendant nos.1 to 3 and 5, 6 and 8 are restrained from taking over possession of

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the vehicle in question from the appellant without following the due process of law subject to the condition that the appellant will not transfer or part with possession of the said vehicle and will maintain the vehicle in the condition as it stands today;

(b) In case any breach is committed by the appellant, liberty to the respondents to apply before the Trial Court for modification of the ad-interim order;

(c) Notice of Motion No.4653 of 2006 shall be heard and disposed of expeditiously;

(d) Rest of the impugned order stands confirmed;

(e) In view of disposal of Appeal from Order, Civil Application No.67 of 2003 does not survive and stands dismissed as such.

(A.S.OKA, J.)